

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

DEAN E. ARNDT,

Plaintiff,

v.

CAUSE NO.: 4:19-CV-98-TLS

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Motion for Approval of Attorney Fees Pursuant to 42 U.S.C. § 406(b) [ECF No. 25], filed on June 12, 2023. The Plaintiff's attorney requests attorney fees in the amount of \$35,556.00 pursuant to 42 U.S.C. § 406(b), with a net amount of \$26,806.00 paid to counsel. The Commissioner does not object to the Plaintiff's Motion. *See* ECF No. 28. For the reasons stated below, the Motion is GRANTED.

BACKGROUND

On April 15, 2016, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on January 21, 2015. AR 11, ECF No. 8. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint in federal court, and the Court reversed and remanded the case for further proceedings. ECF No. 16. On April 11, 2022, the Court awarded the Plaintiff's attorney Equal Access to Justice Act (EAJA) fees in the amount of \$8,750.00. ECF No. 24. Ultimately, the Social Security Administration awarded the Plaintiff past-due benefits, twenty-five percent of which is \$35,556.00. *See* Notice of Award 4, ECF No. 26-1; Pl. Mem. ¶ 5, ECF No. 26.

The Plaintiff's attorney filed the instant motion requesting that the Court award attorney fees pursuant to § 406(b) in the net amount of \$26,806.00. Mot. 1. This amount is based on the retainer agreement between the Plaintiff and his attorney in which the Plaintiff agreed to pay his attorney twenty-five percent of all past-due benefits for work at the federal court level. *See* Fee Agreement, ECF No. 26-1. The total request for an award under § 406(b) is \$35,556.00, which equals the twenty-five percent of past-due benefits withheld by the Social Security Administration. Counsel for the Plaintiff requests that the award of \$35,556.00 be offset by the total prior EAJA fees award of \$8,750.00, for a net payment to the attorney of \$26,806.00 in § 406(b) fees.

ANALYSIS

The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the “character of the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount in attorney's fees is consistent with the contingency agreement. Counsel represents that 45.9 attorney hours were spent in federal court on this case, resulting in an effective hourly rate of \$775.00. *See* Pl. Mem. 8–9; Pl. Ex. 1, p. 6, ECF No. 26-1.

This hourly rate is reasonable given the contingent nature of this case, the favorable past-due benefit award, and the benefit the Plaintiff will receive in future payments. *See Long v. Saul*, No. 3:19-CV-155, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021) (noting that an hourly rate of \$1,711.96 is within the range of rates approved by courts); *Niebuhr v. Saul*, No. 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020) (effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from \$400 to \$1,500).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Plaintiff's Motion for Approval of Attorney Fees Pursuant to 42 U.S.C. § 406(b) [ECF No. 25], AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$35,556.00, and DIRECTS that the amount of \$26,806.00, which already accounts for the offset of EAJA fees of \$8,750.00, be paid directly to counsel for the Plaintiff.

SO ORDERED on June 26, 2023.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT